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IN THE

Supreme Court of the United States

OCTOBER TERM, 1960

No. 490

UNITED STATES OF AMERICA, PETITIONER,

v.

SCHMIDT PRITCHARD & CO., MANGANO CYCLES CO.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF CUSTOMS AND PATENT APPEALS

BRIEF FOR SCHMIDT PRITCHARD & CO., MANGANO CYCLES CO., IN OPPOSITION

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Opinions Below

The opinion of the United States Customs Court is reported at 41 Cust. Ct. 108, C. D. 2029, 167 Fed. Supp. 272 (R. 39-67).[1] The opinion of the United States Court of Customs and Patent Appeals (Pet. 27-45) is reported at Treasury Decisions Volume 95, Advance Sheets No. 38, September 22, 1960, page 34, C.A.D. 750.

[1] "R" herein refers to the Transcript of Record in the United States Court of Customs and Patent Appeals.

Jurisdiction

The judgment of the United States Court of Customs and Patent Appeals was entered on July 20, 1960 (Pet. 44-45). The petition for writ of certiorari was filed on October 17, 1960. The jurisdiction of this Court is invoked under 28 U.S.C. § 1256.[1]

Question Presented

Whether the customs duty imposed on certain imported bicycles was illegally assessed pursuant to Presidential Proclamation No. 3108 of August 18, 1955 for failure of the President and the Tariff Commission to comply with express limitations of the governing statute, Section 7 of the Trade Agreements Extension Act of 1951, as amended.

Statutes and Proclamations Involved

Presidential Proclamation No. 3108,[2] and pertinent portions of Section 7 of the Trade Agreements Extension Act of 1951,[3] and amendments thereto, as well as portions of Section 350 of the Tariff Act of 1930,[4] and amendments thereto are set forth in Appendix B to the petition herein (Pet. 46-54). Pertinent provisions of Sections 3 and 4 of the Trade Agreements Extension Act of 1951[5] and Section 2 of the Trade Agreements Extension Act of 1954,[6] as amended by the Trade Agreements Extension Act of 1955[7] are set forth in Appendix A hereto at pages 21, 22.

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[1] All citations herein to U.S.C. refer to the 1952 edition.

[2] 70 Stat. C4; Exhibit 5 (R. 33).

[3] 65 Stat. 74, 19 U.S.C. § 1364.

[4] The Trade Agreements Act of 1934, 48 Stat. 943, as amended, 19 U.S.C. § 1351.

[5] 65 Stat. 72, 73, 19 U.S.C. §§ 1360, 1361.

[6] 68 Stat. 360.

[7] 69 Stat. 166, § 7, 19 U.S.C., Supp. III, § 1352a.

Statement

Certain imported bicycles involved herein were assessed for duty at 11¼% ad valorem under Paragraph 371, Tariff Act of 1930,[1] as modified by Presidential Proclamation No. 3108 of August 18, 1955.

Respondents initiated this action in the United States Customs Court by a protest filed under Section 514, Tariff Act of 1930,[2] as amended, claiming that said duty of 11¼% was illegally assessed because Proclamation No. 3108 purporting to give effect to such rate was illegal for failure to comply with specific limitations of Section 7, Trade Agreements Extension Act of 1951, as amended, the so-called escape clause, and that the involved bicycles were properly dutiable at 7½% ad valorem under said Paragraph 371 as modified by Proclamation No. 2761-A.[3] The relevant facts are undisputed.

On June 14, 1954 application was filed with the Tariff Commission requesting an investigation with respect to bicycles under said Section 7, Trade Agreements Extension Act of 1951, as amended. Exhibit 1 (R. 21).

On June 22, 1954 the Commission instituted a formal investigation under said Section 7, of which due public notice was given and in the course of which a public hearing was held. Exhibits 1, 2 (R. 21, 26).

On March 14, 1955, the Commission submitted a "Report to the President on Escape Clause Investigation No. 37 Under the Provisions of Section 7 of the Trade Agreements Extension Act of 1951," recommending specific increases in duties applicable to bicycles. Exhibit 3 (R. 29).

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[1] 46 Stat. 625, 19 U.S.C. § 1001, Par. 371.

[2] 46 Stat. 734, 19 U.S.C. § 1514.

[3] 61 Stat. (Part 2) 1103

On May 11, 1955, the President requested the Commission to consider certain specific questions and report thereon to him no later than July 15, 1955 (Exhibits 1(IV)(7), 2(c)). On the same date the President wrote to the Chairmen of the Committee on Ways and Means, House of Representatives and Committee on Finance, United States Senate, advising that he was remanding the case to the Commission for further information (R. 36).

On July 14, 1955 the Tariff Commission submitted a "Supplementary Report to the President on Escape Clause Investigation No. 37 Under the Provisions of Section 7 of the Trade Agreements Extension Act of 1951". Exhibit 4. No public notice was issued and no public hearing held in connection with the "supplemental" investigation. Collective Exhibit 2 (R. 26).

On August 18, 1955 the President issued Proclamation No. 3108 increasing the duties on bicycles, reciting that he was doing so "under the authority vested in me by Section 350 of the Tariff Act of 1930, as amended, and by Section 7(c) of the Trade Agreements Extension Act of 1951, and in accordance with the provisions of Article XIX of the said General Agreement" on Tariffs and Trade.[1] Exhibit 5. On all types except large wheel lightweight bicycles, the President approved and proclaimed the increased rates recommended to him by the Tariff Commission. On large wheel lightweight bicycles the President proclaimed a different rate found by him.

On the same date that Proclamation No. 3108 was issued, the President wrote identical letters to the Chairmen of the Committee on Finance, United States Senate, and the Committee on Ways and Means, House of Representatives, explaining his action, Exhibit 5 (R. 33). Said letters stated that "in 'escape clause' cases such as this" considerations in addition to injury and relief to a domestic

[1] 61 Stat. (Part 5) A58.

industry are involved—that while, under the law—Section 7 of the Trade Agreements Extension Act—"the conditions for relief there established have been met", American bicycles are not directly competitive with the imported large wheel lightweight, and the different action taken by the President would, therefore, recognize "in a measure the indirect competition which the American product may be experiencing from the imported large wheel light weight".

Decision of the United States Customs Court

The United States Customs Court sustained respondents' protest and held Presidential Proclamation No. 3108 invalid on two principal grounds.

First, the court unanimously held that the Tariff Commission investigation was illegal (a) for lack of public notice and hearing as required by the law, if the supplemental inquiry be considered a new investigation, or (b) because not concluded within the 9 month period fixed by said Section 7, if the supplemental inquiry be considered as an extension of the investigation instituted on June 22, 1954.

Secondly, the court held (one member dissenting) that the President had exceeded the statutory powers delegated to him by the Congress in proclaiming a rate of duty different from that recommended to him by the Commission on large wheel lightweight bicycles.

In view of its holding the Customs Court found it unnecessary to pass upon the further contention advanced by respondents that Proclamation No. 3108 was invalid because based "on a finding by the President that the products covered thereby are not like or directly competitive with the American product in violation of the express limitation of law restricting changes in duties to 'like or directly competitive' products" (R. 57-58). The court also apparently found it unnecessary to pass on the further con-

tention that the statute, Section 7(c) authorized the President to issue his proclamation only within 60 days of the March 14, 1955 report of the Commission and that his attempt to do so after the expiration of that period was illegal (R. 45).

Decision of the Court of Customs and Patent Appeals

The Court of Customs and Patent Appeals unanimously affirmed the holding by the Customs Court that Congress has fixed in Section 7 of the Trade Agreements Extension Act of 1951 a limitation on the Presidential exercise of the therein delegated powers and that the President is authorized only to accept or reject recommendations of the Tariff Commission made pursuant to this Section. "Were it otherwise", said the court, "the procedures set up in Section 7 would be meaningless" (Pet. 38). The court, however, disagreed with the Customs Court on the validity of the investigation by the Tariff Commission.[1]

Argument

The basic issue involved herein is neither novel nor of current general importance. The lower court's decision follows holdings by this Court and is consistent with its own prior decisions in the tariff delegation field. The decision of the court below, guided by its expertise in the field of customs and tariff law, is correct and gives effect to the plain meaning of the unambiguous language of the involved statute and the intention of the Congress.

1—*The issue herein is not novel.* Delegation by Congress to designated agents of some of its basic powers under Article 1, Section 8 of the Constitution, to lay and

[1] Worley, Chief Judge, was of opinion that the record also clearly supported the holding of the Customs Court that the procedure followed in the investigation did not comply with the statute.

collect duties and regulate commerce with foreign nations, limited by specific standards, has been long established. *J. W. Hampton, Jr. & Co.* v. *United States*, 276 U. S. 394. That the standards prescribed by the legislature in such delegation must be complied with is equally well established. *Norwegian Nitrogen Products Co.* v. *United States*, 288 U. S. 294, 318; cf. *Morgan* v. *United States*, 298 U. S. 468, 479.

Section 7 of the Trade Agreements Extension Act of 1951, as amended, represents such a delegation by Congress to the President and the Tariff Commission, accompanied by clear and specific limitations or "yardsticks" that any investigation by the Commission shall be completed promptly and within 9 months; that adequate public notice shall be given of any such investigation; that findings and recommendations to prevent injury shall be transmitted by the Commission to the President, and that upon receipt of the Tariff Commission report, the President may much such changes in duty "as are found and reported by the Commission." These requirements were not complied with in this case.

No treaty, trade agreement or other international obligation of the United States is directly involved; the President's power to enter into foreign trade agreements remains unchanged, and the proper exercise by the President of his power over "foreign affairs"[1] is not impaired by the decision of the lower court.

The issue herein involves application of well established rules of statutory construction to a domestic statute and

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[1] *United States* v. *Curtiss-Wright Export Corp.*, 299 U. S. 304, involved power of the President "in respect of a matter intended to affect a situation in foreign territory" (*idem*, 321), wholly unconnected with the fixing of rates of duty on imports into the United States. That case does not hold or intimate that the President may act contrary to an act of Congress in an area where the Congress is constitutionally supreme.

relates directly only to the validity of an attempted change in import duty on a single commodity. The effect of this isolated action is no different than the continual and continuing changes in duty on many different imported commodities as a result of judicial or administrative construction of the tariff laws.

2. *The issue herein is not of sufficient importance to warrant review by this Court.* An insignificant fraction of total imports into the United States is affected by this action. Of the thousands of commodities on which concessions in duties have been granted in trade agreements concluded to date,[1] and hence, subject to possible escape clause action, the lower court's decision covers one class of bicycles only.

Petitioner contends that the necessary result of such holding would invalidate not only Proclamation No. 3136 but also three others and throw doubt upon the validity of a fourth. Two of the proclamations referred to, namely, 3059 (68 Stat. (Part 2) C44) and 3100 (69 Stat. C31[illegible] concerning alsike clover seed, have by their terms long since expired and no similar proclamation on this commodity presently in effect. Proclamation No. 3211 (22 Fed. Reg. 9943) concerning spring clothes pins and Proclamation No. 3257 (23 Fed. Reg. 7475) concerning lead and zinc [illegible] upon special facts unique to each case. Also, Proclamation No. 3257 was issued after substantial amendments to the statute by the Trade Agreements Extension Act of 1958.[2]

The 1958 amendments referred to create further serious doubt that the case at bar is of any current importance.

[1] Concessions in trade agreements in effect on January 1, 1953, for example, accounted for 93.4 percent of total dutiable imports in 1952. *Effect of Trade Agreement Concessions on United States Tariff Levels Based on Imports in 1952*, United States Tariff Commission, September, 1953, at page 3.

[2] 72 Stat. 673.

If these amendments to the law three years after Proclamation No. 3108 was issued, be construed to constitute a specific expression of broad power in the President under said Section 7(c), as contended by petitioner (Pet. 25), the result must be to render the earlier law and actions taken thereunder, academic.

There has been no long continued uniform administrative practice by the President entitled to any weight in the construction of the involved statute and his interpretation of the statute was challenged almost immediately. Cf. *Alexander* v. *Cosden Pipe Line Co.*, 290 U. S. 484, 498; *Higgins* v. *Commissioner*, 312 U. S. 212, 216.[1]

3—*The decision of the court below is clearly correct.* The court below concluded in part (Pet. 43-44):

> "The powers of the President with respect to trade agreements are delegated to him by Congress under its Constitutional powers. It requires no elaborate argument to support the proposition that Congress in so delegating its powers may prescribe whatever procedures and limitations it sees fit to enact for limiting the exercise by its agents of such delegated powers.
>
> "The language of section 7 of the Trade Agreements Extension Act of 1951, as amended, is clear and unambiguous. The legal result which is contemplated by the plain meaning of the language of the statute appears to be reasonable and consistent with the overall purposes expressed in other sections of the Act."

This holding is in accord with decisions by this Court hereinbefore referred to (*supra*, p. 7) in *Hampton* v.

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[1] Furthermore, the alleged administrative practice contended for by petitioner is so flatly at variance with the plain meaning of Section 7, that even if it existed it would not be controlling on this Court. *Louisville & N. R. Co.* v. *United States*, 282 U. S. 740, 750; *India* v. *United States*, 270 U. S. 245, 251.

United States and *Norwegian Nitrogen Products Co.* v. *United States*.:

The holding of the lower court is also consistent with prior decisions of that court in construing the so-called flexible tariff act, Section 336 of the Tariff Act of 1930, the statutory plan of which bears striking similarity to Section 7 of the Trade Agreements Extension Act of 1951. Thus, the provision in said Section 336(c), providing that

> "the President shall by proclamation approve the rates of duty * * * specified in any report of the [Tariff] commission under this section, if in his judgment such rates of duty * * * are * * * necessary * * *"

was held to limit the President to *approval* or *disapproval* of the rates specified by the Commission in its report. *Feltex Corp.* v. *Dutchess Hat Works*, 21 CCPA 463; *United States* v. *Best & Co.*, 24 CCPA 220. Said decisions gave full effect to the Conference Report on H. R. 2667, the Tariff Bill of 1930, which stated in part that under the above-quoted provisions "the President may not modify a rate, classification, or basis of value so specified by the Commission."[2]

Petitioner suggests that Section 350(a) of the Tariff Act of 1930 is the basic statute vesting "substantive" power in the President to change import duties under the trade agreements program, while Section 7 of the Trade Agreements Extension Act of 1951 is merely "procedural". Section 350 deals with authority of the President to enter *into* trade agreements with foreign countries, and to proclaim modification of existing tariff duties to *carry out* any such foreign trade agreement. The powers thus delegated are carefully delineated and limited, doubtless, to keep the trade agreements statute within the constitutional boundaries outlined by this Court in *Hampton* v. *United*

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[1] 46 Stat. 701, 19 U.S.C. § 1336.

[2] H. Rept. No. 1803, 71st Cong., 2nd Sess., pages 28-29.

States, supra.[1] Similarly, in enacting in Section 7 the statutory provision for "escape" from any modification in duty proclaimed by the President under Section 350, the Congress prescribed limitations for the same purpose.

Whatever powers may have been delegated to the President by the Congress under said Section 350,[2] which it is not necessary here to decide, any action taken by the President *for the purposes of said Section 7* is clearly controlled by the limitations and standards precisely set forth by Congress in that later, more specific provision of law. *Ginsberg & Sons* v. *Popkin*, 285 U. S. 204, 208, and cases cited therein. The "plenary discretion" asserted by petitioner (Pet. 23) cannot be found in the face of this specific later action by the Congress, and the lower court correctly so held.

4—*The holding by the Court below is in full accord with the legislative intention.* The language of Section 7(c) of the Trade Agreements Extension Act of 1951, as amended, is clear and unambiguous and the plain meaning of the words used by the Congress accords fully with the construction by the Court below. Legislative history of the section, furthermore, if properly invoked, supports such plain meaning.

Prior to enactment of a statutory escape clause in the Trade Agreement Extension Act of 1951, escape action from trade agreement concessions rested entirely upon Executive Orders 9832 of February 25, 1947 (12 Fed. Reg. 1363), 10004 of October 5, 1948 (13 Fed. Reg. 5851) and 10082 of October 5, 1949 (14 Fed. Reg. 6105, 15 Fed. Reg. 601) in which the President invested himself with broad discretion.

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[1] See H. Rept. No. 1000, 73d Cong., 2nd Sess., on H. R. 8687 the Trade Agreements Bill of 1934, at p. 11.

[2] Cf. *United States* v. *Metropolitan Petroleum Corp.*, 42 C.C.P.A. 8, *cert. den.* 348 U. S. 858; *United States* v. *American Bitumuls & Asp. Co.*, 44 C.C.P.A. 193, 240 F. 2d 270, *cert. den.* 355 U. S. 883

The procedures thereby established provided for investigation by the Tariff Commission and its report and recommendation to the President "for his consideration in the light of the public interest."

In 1951, a bill, H. R. 1612, limited to extension of the Trade Agreements Act was reported to the House of Representatives by the Committee on Ways and Means. The bill was vigorously attacked for failure to include therein standards to regulate escape action.[1]

An amendment to H. R. 1612 by Congressman Curtis to incorporate escape clause standards by vesting authority in the President to take such action "as he deemed necessary" was offered and withdrawn[2] in favor of an amendment by Congressman Bailey providing for investigation, report and recommendation by the Tariff Commission to the President, but containing no provision for action by the President, which was adopted by the House of Representatives.[3]

The Senate Committee on Finance redrafted the escape clause provisions and added Section 7(c) defining action by the President in the same form as enacted and in force when the proclamation here involved was issued. In reporting the bill, the Committee said in part:

"It is the construction of this committee that . . .

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[1] See H. Rept. No. 14, 82nd Cong., 1st Sess., pp. 20, 22-24; remarks of Congressmen Mills, 97 Cong. Rec. 820, 827; Reed, pp. 800, 807; Seely-Brown, *idem* pp. 818, 819; Martin, *idem* pp. 856, 857, and Bailey, *idem* pp. 835 and 1049.

[2] *Idem*, pp. 1070, 1076.

[3] *Idem*, pp. 1074, 1077, 1081, 1233 (as corrected). A provision in the Bailey amendment limiting operation of escape clause action to commodities included in a trade agreement containing an escape clause within the agreement, as did Executive Orders 9832 [illegible] and 10082, was eliminated in conference.

escape action taken, shall be administered under the procedures provided in section 7 of this bill."[1]

As finally enacted H. R. 1612 retained the Senate provisions with no substantial changes.[2]

The holding of the court below is further supported by other provisions of the law in *pari materia* with Section 7 of the Trade Agreements Extension Act of 1951, namely, the so-called "peril point" provisions of Sections 3 and 4 of the Trade Agreements Extension Act of 1951, and the so-called "national security" provisions of the trade agreements statute, as amended by the Trade Agreements Extension Act of 1955.[3]

Section 3 of the Trade Agreements Extension Act of 1951, as enacted, provides that prior to entering into any negotiations for trade agreements under Section 350 of the Tariff Act of 1930, the Tariff Commission shall investigate

[1] Sen. Rept. No. 280, 82nd Cong., 1st Sess., p. 6.

[2] Conference Report on H. R. 1612, H. Rept. No. 537, 82nd Cong., 1st Sess., p. 4. The provisions of Section 7 (re defining the President's power in escape clause actions, adopted as above-quoted in 1951, have remained unchanged, although in 1953, 1954 and 1955 Congress acted to extend the power of the President to enter into trade agreements under Section 350 and adopted various changes in that law as well as to sections pertaining to general operation of the escape clause. One such change affecting escape clause action, adopted in 1953, provided that if the Commission was divided into two equal groups, each of which was unanimous, the President might consider either of the two sets of findings or recommendations as the findings or recommendations of the Commission. Trade Agreements Extension Act of 1953, § 201, 67 Stat. 472, 19 U.S.C., Supp. III, § 1330.) Had it been the intention to permit the President to disregard findings or recommendations of the Commission and to proclaim different rates, this amendment to the law would seem to have been useless.

[3] 19 U.S.C., § 1360, 1361; see Appendix V hereto for pertinent provisions.

[4] 19 U.S.C., Supp. III, § 1352a; see Appendix V for pertinent provisions.

articles to be considered and report to the President its findings as to the limit to which modifications in duty may be made without causing injury, or whether an increase in duty or other import restriction is required to avoid injury. The statute further provides, however, in Section 4 (19 U.S.C. § 1354), that the President may *enter into a trade agreement which may exceed the limit found and reported by the Tariff Commission, or fail to reserve or make appropriate the minimum increase in duty reported by the Commission as required to avoid such injury.*[1] By this section, therefore, the Congress has given express *authority* to the President to take positive action at variance with the "peril point" findings of the Commission.

The "national security" amendment to the law adopted in 1955, provides that whenever any article is being imported in such quantities as to threaten or impair national security, and after investigation and report to him of the findings and recommendations made in connection therewith, the President

> . . . . shall *take such action as he deems necessary*

(Emphasis added.)

Significantly, the words above emphasized "as he deems necessary", were included in the escape clause amendment offered by Congressman Curtis during consideration of the Trade Agreements Extension Act of 1951. As heretofore noted,[2] said amendment was dropped and the Congress enacted the very specific language found in present law.

The foregoing makes clear that when Congress intends to give discretion to the President to take action as he *deems necessary* by way of modifying duties on imports, it used clear and specific language to express such intention. The equally clear and specific language of Section of the Trade Agreements Extension Act of 1951, however

[1] *Ibid.*, § 1352a (b).

[2] *Supra*, p. 12 n. 2.

completely negates any idea that the Congress had any intention to, or did, in fact, confer on the President anything but limited power to accept or reject "such" findings and recommendations "as are found and reported" by the Commission. The attempt by the President to substitute new findings and a new and different rate of duty was therefore illegal, and the lower court correctly so held.

Collateral Questions Argued in Petition

The petition herein presents a number of arguments on matters believed to be collateral to the basic issue involved here.

Petitioner refers to Article XIX of the General Agreement on Tariffs and Trade as further alleged authority for the President to modify tariff concessions through escape action, separate and apart from the provisions of said Section 7.

The General Agreement on Tariffs and Trade (GATT) is a provisional agreement only.[1] Furthermore, the Congress, in amending and continuing its delegation of power to the President in trade agreement legislation has since 1951 included a provision as follows:[2]

> The enactment of this Act shall not be construed to determine or indicate the approval or disapproval by the Congress of the Executive Agreement known as the General Agreement on Tariffs and Trade.

[1] *See, e.g.*, page 4.

[1] Protocol of Provisional Application of the General Agreement on Tariffs and Trade, 61 Stat. (Part 6) A2051. See Commission on Foreign Economic Policy: *Staff Papers*, p. 270, and *Report to the President and the Congress*, p. 4 (1954).

[2] Trade Agreements Extension Act of 1951, § 10 (19 U.S.C. § 1364); Trade Agreements Extension Act of 1953, § 103; Trade Agreements Extension Act of 1954, § 3; Trade Agreements Extension Act of 1955, § 3(a); Trade Agreements Extension Act of 1958, § 10.

Article XIX of GATT can hardly be asserted to vest powers in the President superior to those embodied in the later specific legislative enactment of said Section 7.

Petitioner contends that the Court below has ignored the so-called essentially different roles of the President and the Tariff Commission under the escape clause—that under Section 7 the Commission may consider only injury to a domestic industry while the scope of the President's inquiry is much broader and includes a number of general factors. This contention ignores the fact that Section 7 establishes a particular proceeding for a particular purpose only, namely, to prevent or remedy injury to a domestic industry.

Undoubtedly, the President weighs many factors in arriving at a decision. Clearly, however, his *decision* is limited by the statutory language to accepting or rejecting "such" recommendations "as are found and reported by the Commission."

The suggestion that the effect of the decision below is to vest the Commission "with authority to control the nation's foreign relations and over-all national interests" (Pet. 22) is completely unsound. In making its findings and recommendations, the Commission acts under Section 7 in accordance with its historic function as a fact finding body. As an agent of the Congress, it gives expression to the clearly expressed will of Congress by placing before the President findings and recommendations to prevent injury to a domestic industry for his optional acceptance or rejection. It does not, and cannot, of course, dictate to or control action by the President—*any more than it can or does under the flexible tariff, Section 336 of the Tariff Act. Supra*, p. 10.

The President retains the same discretionary power which he possesses with respect to any proposed law or legislation placed before him by the Congress. He weighs many factors and may accept or reject. If he accepts

the findings of the Commission, his action is equivalent to approval of a law passed by the Congress. If he rejects the findings of the Commission his action is equivalent to a veto.

Petitioner asserts (Pet. 16, 17) that in consideration of the 1955 Trade Agreements Extension Act, the House Ways and Means Committee confirmed a construction of the law that the President was intended by Congress to have full discretion to accept, reject or modify the Commission's recommendations. The report of the Committee cited in this connection does not support said allegation.[1]

Petitioner refers further (Pet. 24) to a report of a sub-committee on "Customs, Tariffs and Reciprocal Trade Agreements" issued *in 1957*[2] which, it is asserted, sets forth a construction of the 1951 law for which petitioner here contends. Actually that report at page 74 under the heading "Scope of Presidential discretion with respect to the 'escape clause'" states in part:

> "The President is given the discretion to accept or reject the Commission's recommendations."

That the subcommittee report referred to was not intended to present any considered conclusions or recommendations, however, is made clear in the body thereof.[3]

Petitioner further asserts (Pet. 25) that the alleged construction of law by the House subcommittee above referred to was reconfirmed in the House Committee Report on H. R. 12591, 85th Cong., 2nd Sess., which was enacted as

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[1] H. Rept. No. 50, 84th Cong., 1st Sess.

[2] *Report to the Committee on Ways and Means on United States Customs, Tariff, and Trade Agreement Laws and the Administration, from the Subcommittee on Customs, Tariffs and Reciprocal Trade Agreements*, 1957.

[3] See Comment on cover page and on page iv of report, *supra*

the Trade Agreements Extension Act of 1958, and that Congress as a whole considers this interpretation to be correct as is now apparent on the face of the present statute. Study of the Committee report referred to discloses no reference which may fairly be said to constitute confirmation, approval or otherwise of the alleged power in the President. On the contrary, an exactly opposite conclusion may fairly be drawn. See H. Rept. No. 1761, 85th Cong., 2nd Sess., pp. 10 *et seq.*

The 1958 Extension Law *made no change in* the provisions of *Section 7(c) defining* the power of the President to act on Commission recommendations.[1] Congress merely *added* a *new* provision establishing specific procedures for review and action by the Congress in instances where the President might *thereafter* disapprove a Tariff Commission recommendation "in whole or in part".[2] Petitioner argues that by this 1958 amendment Congress was "reconfirming" (Pet. 25) the President's action under the law in one unspecified instance 3 years earlier. Had such been the intention of the Congress, it would surely have used language more carefully calculated to accomplish that result. "The views of a subsequent Congress form a hazardous basis for inferring the intent of an earlier one." *United States* v. *Price*, 361 U. S. 304, 313.

It should be noted here that the power of the President to enter into trade agreements was originally limited to a period of 3 years.[3] That power of the President has been extended from time to time; the latest such extension having been made in 1958 and expiring in 1962.[4] In most of such extensions amendments to the statute further defined and limited the powers delegated to the President. Section

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[1] Trade Agreements Extension Act of 1958, § 9.

[2] *Ibid.*

[3] Trade Agreements Act of 1934, § 2(c).

[4] 1958 Extension Act, § 2.

7, however, was enacted without any time limitation and is permanent legislation. Congress has never been called upon to re-enact or extend that specific provision of law. Accordingly, no basis exists for invoking any alleged Congressional adoption of administrative construction and the cases cited by petitioner (Pet. 23) in this regard have no bearing here.

The legislative history of the 1958 Extension Act discloses nothing to indicate that Congress considered it was codifying any construction of the pre-existing law. That statutes should be given prospective effect only, in the absence of clear contrary legislative intention, is settled law. *Russell* v. *United States*, 278 U. S. 181, 187-188; *Haggar Co.* v. *Helvering*, 308 U. S. 389, 398-400. In the latter case this Court said in part (*idem*, p. 400):

> "If we are to draw inferences it would seem as probable that Congress was content to leave the problems of the past to be solved by the courts where they were then pending, rather than to preclude their solution there. Action so ambiguous in its implications as to the past is wanting in that certainty and evident purpose which would justify its acceptance as a legislative declaration of what an earlier Congress had intended rather than an effort to make clear that which had been rendered dubious by unwarranted administrative construction."

If consideration may properly be given to an amendment to the law adopted by the Congress in 1958, 3 years after the proclamation in question was issued, and 7 years after the governing statute was enacted, the proper rule applicable would seem to be that the deliberate addition of new language indicates a change of meaning was intended. *Crook County* v. *Sober*, 318 U. S. 705, 714.

The 1958 amendment to the escape clause provision in question, like the adoption of a statutory escape clause in

copy of such agreement together with a message accurately identifying the article with respect to which such limits or minimum requirements are not complied with, and stating his reasons for the action taken with respect to such article * * *.

2. The "national security" provisions of the Trade Agreements Extension Act of 1954, 68 Stat. 360, § 2, as amended by the Trade Agreements Extension Act of 1955, 69 Stat. 166, § 7 (19 U.S.C., Supp. III, § 1352(a)):

Sec. 2. (a) No action shall be taken pursuant to such section 350 to decrease the duty on any article if the President finds that such reduction would threaten domestic production needed for projected national defense requirements.

(b) In order to further the policy and purpose of this section, whenever the Director of the Office of Defense Mobilization has reason to believe that any article is being imported into the United States in such quantities as to threaten to impair the national security, he shall so advise the President, and if the President agrees that there is reason for such belief, the President shall cause an immediate investigation to be made to determine the facts. If, on the basis of such investigation, and the report to him of the findings and recommendations made in connection therewith, the President finds that the article is being imported into the United States in such quantities as to threaten to impair the national security, he shall take such action as he deems necessary to adjust the imports of such article to a level that will not threaten to impair the national security.